

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

ST. LOUIS COUNTY,)	
)	
Plaintiff,)	
)	
v.)	Case No.: 4:20-cv-00655
)	
HOUSE OF PAIN GYM SERVICES,)	
LLC, F FOUR, LLC, d/b/a “House of)	
Pain Gym” and “House of Pain”,)	
)	
Defendants.)	

MOTION TO DISMISS

COMES NOW fraudulently and pretensively joined Defendant, House of Pain Gym Services, LLC, and Defendant F Four, LLC, d/b/a “House of Pain Gym” and d/b/a “House of Pain”, by and through their undersigned counsel, and pursuant to Fed.R.Civ.P. 12(b)(6), move this honorable Court to dismiss Plaintiff St. Louis County’s Complaint and Deny Plaintiff’s Request for Temporary Restraining Order and Injunctive Relief. As grounds therefore, Defendants state that:

1. The Court does not have jurisdiction in equity to enter injunctive relief because the Plaintiff has denied Defendants their substantive and procedural due process rights guaranteed by the Fourteenth Amendment in that Plaintiff has failed to exhaust its administrative remedies and procedures (created by its own ordinances) which provide an adequate remedy at law for alleged public nuisance violations.

2. The primary jurisdiction doctrine should also be applied to bar Plaintiff’s public nuisance lawsuit because Plaintiff has failed to follow the administrative procedure set forth in its own ordinances that is set up to provide persons and businesses accused of committing public

nuisance violations with substantive and procedural due process protections the Plaintiff has completely disregarded in bringing this lawsuit.

3. The May 8, 2020 “stay at home” order issued by the Acting Director of the St. Louis County Department Public Health (the “County Order”), at least as applied to its nominal mandate that gyms must remain closed, is unenforceable as a matter of law because it is inconsistent with the controlling State order issued by the Director of the Missouri Department of Health and Senior Services on April 27, 2020, which became effective May 4, 2020 (the “State Order”) that permits gyms to open in conformity with the President’s “Opening America Up Again Guidelines” which were incorporated by reference into the State Order (and which specifically say that gyms can be open if they adhere to strict physical distancing and sanitation protocols).

4. The County Order, at least as applied to the blanket closure of gyms and fitness centers, is unenforceable because it violates both the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment. Moreover, the Acting Director of the St. Louis County Department of Public Health has not actual legal authority under any of the statutes, county charter provisions or ordinances relied upon by the government in this case to make a law – certainly not a law that imposes such draconian limitations on the sacred constitutional liberties of every single person in St. Louis County, and purports to criminalize the conduct the County Order vaguely and inconsistently nominally prohibits. The authority to make such laws is vested in the legislative branch of the government.

5. The County Order is void and unenforceable as a matter of law because the St Louis County Executive has no authority to declare a state of emergency anywhere other than unincorporated areas of St. Louis County and the gyms at issue are situated within separate political subdivisions of the state.

6. Plaintiff's Complaint fails to state a public nuisance (or any other) claim upon which relief can be granted.

7. Plaintiff is not entitled to any injunctive relief at all, let alone the draconian temporary restraining order and preliminary injunction. It has not met, and cannot meet, the strict and heightened pleading and proof standard necessary to justify the imposition of the extraordinary and drastic remedies it seeks.

In support of this Motion, Defendants submit herewith a memorandum of law.

CONCLUSION

For the reasons set forth herein and in the accompanying memorandum, Defendants respectfully pray this honorable Court to enter an order denying the Government's request for injunctive relief and dismissing the Complaint with prejudice, and awarding such other and further relief as the Court deems just and proper under the circumstances.

VERIFICATION OF SIGNED ORIGINAL DOCUMENT

Pursuant to Local Rule 11-2.11, W. Christopher McDonough, hereby attests to the existence of a paper copy of this document bearing the original signature of W. Christopher McDonough. The document was electronically filed on May 19, 2020. Counsel will retain the paper copy bearing the original signatures during the pendency of the litigation including all possible appeals.

Respectfully submitted,

THE McDONOUGH LAW FIRM, LLC

By: /s/ W. Christopher McDonough
W. Christopher McDonough # 49648MO
16640 Chesterfield Grove Road, Suite 125
Chesterfield, MO 63005
(636) 530-1815 - Telephone
(636) 530-1816 - Facsimile
E-mail: wcm@mcdlawfirm.net
Attorneys for Defendants

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing has filed with the Court for service on all counsel of record via the Court's ECF system on May 19, 2020.

/s/ W. Christopher McDonough